

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
City of Suffolk, Virginia)	
and Sprint Nextel)	WT Docket No. 02-55
)	
Mediation No. TAM-12037)	

MEMORANDUM OPINION AND ORDER

Adopted: September 10, 2007

Released: September 10, 2007

By the Associate Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, we address a case referred to us for *de novo* review from Wave 1, Phase 2 mediation by the 800 MHz Transition Administrator (TA) involving disputes between the City of Suffolk, Virginia (Suffolk) and Sprint Nextel Corporation (Sprint). The disputes relate to the reimbursability of certain software as well as costs incurred by Suffolk's consultant, Televate LLC (Televate). Based on previous decisions and our *de novo* review of the mediation record, we find that Suffolk is entitled to the compensation it seeks from Sprint for inventory tracking software. In addition, we approve the majority of Suffolk's claims for estimated internal staff and consulting costs. However, we disallow certain items as duplicative and direct Suffolk to look for cost savings in its actual expenditures with respect to certain other items.

II. BACKGROUND

2. Suffolk's communication system (licensed under call signs WNMJ688 and WQEQ912) consists of a three-site twelve channel system serving 1310 subscriber units.¹ Fourteen government agencies use the system, which is governed by a regional Memorandum of Understanding facilitating mutual aid with all jurisdictions in the Hampton Roads region.² Suffolk does not have significant internal staff resources to manage the system, and is therefore relying almost exclusively on Televate and Motorola to provide rebanding services.³

3. Suffolk and Sprint commenced negotiations regarding a Planning Funding Agreement (PFA) for retuning of the system in February 2006.⁴ The case was referred to mediation on August 26,

¹ Recommended Resolution, filed April 5, 2007 by the 800 MHz Transition Administrator, LLC (RR) at 1, 3, Proposed Resolution Memorandum of Nextel Communications, Inc, filed December 28, 2006, Appendix D (Sprint PRM).

² Proposed Resolution Memorandum of Licensee, filed December 1, 2006, by City of Suffolk, Ex.1 at 24 (Suffolk PRM).

³ *Id.*, Exhibit 1. Suffolk states that for over five years, a single technician was tasked with maintaining the system, and that only in April 2006 was the city able to procure the services of a system manager.

⁴ RR at 2.

2006.⁵ On April 5, 2007, after mediation proved unsuccessful, the mediator referred the matter to the Public Safety and Homeland Security Bureau (PSHSB) for *de novo* review and resolution, submitting the record in the case as well as his Recommended Resolution.⁶ The parties filed Statements of Position with PSHSB on June 29, 2007.⁷ The parties remain at odds on the use of certain software, coverage testing, and consultant costs. We note that Suffolk did not contest the mediator's recommended resolution in its Statement of Position, but did seek reimbursement for 304 additional consultant hours that were not included in its initial Proposed Resolution Memorandum (PRM) submitted to the mediator.⁸

III. DISCUSSION

A. Standard of Review

4. As an initial matter, the Commission's orders in this docket assign to Suffolk the burden of proving that the funding it has requested is reasonable, prudent, and the "minimum necessary to provide facilities comparable to those presently in use."⁹ We note that the Commission has recently clarified this standard for purposes of determining whether licensee relocation costs are the "minimum necessary" to accomplish rebanding, and therefore must be paid by Sprint.¹⁰ In the *Rebanding Cost Clarification Order*, the Commission stated that the term "minimum necessary" cost does not mean the absolute lowest cost under any circumstances, but the "minimum cost necessary to accomplish rebanding in a reasonable, prudent, and timely manner."¹¹ This standard takes into account not just cost but all of the objectives of the proceeding, including timely and efficient completion of the rebanding process, minimizing the burden rebanding imposes on public safety licensees, and facilitating a seamless transition that preserves public safety's ability to operate during the transition.¹²

5. Our review of costs is also influenced by our experience in reviewing the costs incurred by other similarly-situated 800 MHz licensees in the rebanding process. In this regard, we have the benefit of data from the TA that can provide us with cost metrics for approved agreements for systems of varying size and complexity.¹³ We stress that these metrics are only one guiding factor underlying our analysis of the reasonableness of planning costs. Depending on the facts the licensee has established in the record, we may disapprove costs that fall below the guidelines or, conversely, approve costs that exceed the guidelines. We now turn to the specific issues in dispute.

B. MCM Software

6. Suffolk seeks \$19,380 for the purchase of third-party proprietary software developed by MCM Technology LLC (MCM) for inventory management and tracking of radio equipment involved in

⁵ *Id.*

⁶ *Id.*

⁷ Statement of Position, filed by Suffolk, June 29, 2007 (Suffolk SOP); Statement of Position, filed by Sprint Nextel, June 29, 2007 (Sprint SOP).

⁸ See generally Suffolk SOP. This issue is addressed in Section III.H., *infra*.

⁹ See Improving Public Safety Communications in the 800 MHz Band, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd 14969, 15074 ¶ 198 (2004) (*800 MHz Report and Order*); Improving Public Safety Communications in the 800 MHz Band, *Supplemental Order and Order on Reconsideration*, 19 FCC Rcd 25120, 25152 ¶ 71 (2004) (*800 MHz Supplemental Order*).

¹⁰ Improving Public Safety Communications in the 800 MHz Band, *Memorandum Opinion and Order*, 22 FCC Rcd 9818 (2007) (*Rebanding Cost Clarification Order*).

¹¹ *Id.* at ¶ 6.

¹² *Id.* at ¶ 8.

¹³ See http://800ta.org/content/PDF/other/Planning_Funding_Cost_Metrics.pdf

the reconfiguration process.¹⁴ We find that these costs are reasonable and recoverable.

7. *Suffolk Position.* Suffolk argues that it has neither the methodology nor the staff to track its radios or time spent by personnel working on rebanding.¹⁵ Suffolk states that it has evaluated other software programs and that the MCM software is the only software that would not require extensive customization and user training.¹⁶ Suffolk also argues that this version of MCM software is consistent with the Bureau's decision in the *City of Boston* case in that the software will not provide Suffolk with significant post-rebanding benefits.¹⁷

8. *Sprint Position.* Sprint offers \$11 per unit, or \$14,410, to cover Suffolk's inventory expenses.¹⁸ Sprint contends that Suffolk failed to "fully vet bids and quotes submitted by potential service providers to ensure that the activities are reasonable and prudent expenses directly related to the retuning of an 800 MHz system."¹⁹ Sprint contends that MCM software is unnecessary since other jurisdictions routinely schedule and dispatch personnel, track radios, and record internal costs without the aid of MCM software.²⁰ Finally, Sprint argues that the cost of the MCM software is excessive for this project in light of the fact that Suffolk is already proposing \$70,000 in project management expenses.²¹

9. *Mediator Recommendation.* The mediator recommends finding that Suffolk is not entitled to reimbursement for the MCM software. The mediator cites to our prior *City of Boston* decision, in which we found that MCM software was not operationally necessary for the City of Boston to reband its system and therefore was not a recoverable expense.²² The mediator questions Suffolk's estimate that without the MCM software, it would need "300-400 hours" to develop an alternative spreadsheet solution.²³

10. *Discussion.* We find that Suffolk's proposed use of MCM software in this case is a recoverable expense. As we noted in our recent *Washoe County* order, the MCM software that Suffolk seeks to employ is less costly and more directly tailored to rebanding than what Boston sought to employ.²⁴ In *City of Boston*, MCM proposed to sell Boston a package costing \$159,825 that consisted of a backbone system, asset management software, and report-writing software.²⁵ We found that this package and associated training would provide benefits and capabilities beyond those necessary to

¹⁴ The software at issue is MCM's "360 Project Management Platform" (hereinafter, "MCM software").

¹⁵ Suffolk PRM at 12-13, Reply of City of Suffolk, Virginia to Nextel Communications, Inc. Proposed Resolution Memorandum, filed Feb. 27, 2007 at 8 (Suffolk Reply PRM).

¹⁶ Suffolk Reply PRM at 8, 10. Among the options Suffolk rejected was a Excel-based solution offered by Sprint. Suffolk Reply PRM at 15. Suffolk's reasons for rejecting this solution are literally identical to the reasons by Washoe County in its dispute with Sprint. See Washoe County, Nevada and Sprint Nextel, *Memorandum Opinion and Order*, WT Docket 02-55, DA 07-2955 (rel. Jul. 3, 2007) n.34 (*Washoe County MO&O*).

¹⁷ Suffolk Reply PRM at 12.

¹⁸ Sprint PRM at 30.

¹⁹ *Id.* at 14.

²⁰ Proposed Resolution Memorandum of Nextel Communications, Inc., filed Feb. 27, 2007 at 5 (Sprint Supplemental PRM).

²¹ Sprint Supplemental PRM at 5-6.

²² RR at 32 citing City of Boston, Massachusetts and Sprint Nextel, *Memorandum Opinion and Order*, WT 02-55, 21 FCC Rcd 14661 (PSHSB 2007) (*Boston MO&O*).

²³ *Id.*

²⁴ *Washoe MO&O* at ¶ 23.

²⁵ *Boston MO&O*, 22 FCC Rcd at 14667-68 ¶ 24.

support Boston's rebanding effort.²⁶ Suffolk, on the other hand, proposes to spend \$19,380 to obtain use of the MCM software solely for rebanding purposes.²⁷ Suffolk will not acquire the backbone system but will instead access the software on MCM's servers, and will cease using it once rebanding is completed.²⁸ The proposed combined cost of the MCM software and associated labor in this case is significantly less than was proposed in *City of Boston*: in the latter case, these costs represented 12 percent of the total retuning costs and totaled \$59 per radio.²⁹ In this case, the proposed combined cost of \$19,380 is approximately 7.6 percent of Suffolk's total requested planning costs retuning costs and approximately \$15 per radio.³⁰

11. While we acknowledge that Suffolk does not operate a particularly complex system, we note that Suffolk's rebanding effort is complicated by its lack of internal personnel to work on rebanding, a fact that forces Suffolk to rely almost exclusively on consultants to perform rebanding tasks. Given that these tasks are being billed at approximately \$150 per hour, if use of the MCM software saves 130 consultant hours over the course of rebanding, it will have effectively paid for itself.³¹ We fully expect Suffolk to achieve at least this level of efficiency through the use of the software. We also note that the difference between Sprint's offer of \$11/radio and the cost of the MCM software is under \$5,000, a *de minimis* amount, especially when viewed in light of the overall cost of this project.

C. Other Inventory Costs

12. Suffolk seeks compensation for 18 hours spent by Televate on infrastructure inventory and 106 hours on subscriber unit inventory. We approve the 18 hours for infrastructure inventory and 76 hours for subscriber inventory.

13. *Suffolk Position.* With respect to infrastructure inventory, Suffolk acknowledges that Motorola will perform the inventory of its fixed equipment, but argues that Televate's 18 hours of work on infrastructure inventory is not duplicative of tasks assigned to Motorola.³² Suffolk states that it has so little internal information about its system that it requires the consultant's assistance to accurately complete the Motorola questionnaire regarding its proposed inventory tasks.³³ Suffolk states that Televate has already spent 14.5 hours assisting in the collection of this information.³⁴

14. With respect to the subscriber unit inventory, Suffolk states that Televate spent 31.5 hours reviewing existing records to determine the approximate count of Suffolk's subscriber units and used this information in preparing Suffolk's RFPF.³⁵ Suffolk contends, however, that Televate must perform a second, more specific inventory to develop Suffolk's reconfiguration plan.³⁶ Suffolk states that the

²⁶ *Boston MO&O*, 22 FCC Rcd at 14670 ¶ 29.

²⁷ Suffolk Reply PRM at 12.

²⁸ *Id.*

²⁹ *Boston MO&O*, 22 FCC Rcd at 14667-68 ¶ 24.

³⁰ Based upon the initial cost estimate submitted by Suffolk. Suffolk seeks over \$252,000 in planning costs. See Sprint Supplemental PRM Exhibit T. We note that Suffolk's cost for the MCM software is significantly lower than the amount we approved in *Washoe* because Washoe requested ten user licenses for its system while Suffolk only requests two.

³¹ Televate's rates are contained in Suffolk's Request for Planning Funding, Suffolk PRM, Exhibit 5.

³² Suffolk PRM at 6.

³³ *Id.* at 6-7.

³⁴ *Id.* at 7.

³⁵ *Id.*

³⁶ *Id.*

second inventory is more time-intensive because Televate must (1) identify subscriber units by agency, location, type, and model number; (2) create a list of all accessories currently associated with each unit; and (3) create a master database of the licensee's subscriber units.³⁷

15. *Sprint Position.* Sprint offers 42 hours for infrastructure and subscriber unit inventory.³⁸ With regard to the infrastructure inventory, Sprint argues that Televate's proposed hours are duplicative of Motorola's efforts.³⁹ With respect to subscriber inventory, Sprint argues that the proposed inventory for the reconfiguration plan is duplicative of the initial inventory performed by Televate to prepare the RFPP.⁴⁰

16. *Mediator Recommendation.* The mediator recommended approving 91.5 hours (15.5 hours for Televate's role in infrastructure inventory and 76 hours for Televate's role in subscriber inventory).⁴¹ The mediator concluded that Suffolk had justified the work already performed by Televate on infrastructure inventory, but had not shown that additional work by Televate was required.⁴² With regard to subscriber inventory, the mediator found most of Suffolk's requested hours to be reasonable, but concluded that 30 of the 106 hours requested were duplicative of tasks to be performed by Motorola or other project management tasks to be performed by Televate.⁴³

17. *Discussion.* We approve 18 hours for infrastructure inventory as requested by Suffolk. Given the limited number of hours at issue for this task, we find that approval of the full amount is appropriate under the guidance provided by the *Minimum Cost Order*. We also approve 76 hours for subscriber inventory. We find that Suffolk's request for 106 hours included some duplication of tasks assigned to Motorola or accounted for under other project management categories. Suffolk seeks 22 hours for Televate to "[r]esearch radio vendor radio [r]ebanding documentation and interact with vendor as appropriate" but also tasks Motorola with rebanding, reprogramming and replacing equipment.⁴⁴ Similarly, Suffolk requests 8 hours for Televate to monitor the progress of subscriber inventory is duplicative of Televate's overall Project Management task.⁴⁵ We also anticipate that Suffolk will realize efficiencies from the use of MCM software to track inventory both in the planning phase of rebanding and the implementation phase.

D. Televate Project Management Costs

18. Suffolk requests compensation for 435.75 hours of project management work by Televate. For the reasons set forth below, we approve 281.75 hours.

19. *Suffolk Position.* In its PRM, Suffolk states that Televate has already spent 275.75 hours on project management, and provides a detailed breakdown of the sub-tasks on which this time was spent.⁴⁶ Suffolk also estimates that Televate will spend an additional 160 hours on project management going forward, and provides a breakdown of these costs as well.⁴⁷ Suffolk states that it prepared its cost

³⁷ Suffolk Reply PRM at 7-8.

³⁸ Sprint PRM at 14.

³⁹ Sprint PRM at 12.

⁴⁰ *Id.* at 14.

⁴¹ RR at 27.

⁴² *Id.*

⁴³ *Id.* at 28-29.

⁴⁴ See Sprint PRM at 11-12, App. A at 6.

⁴⁵ See Sprint PRM, App. A at 6 and Suffolk PRM, Exhibit 5 at 17.

⁴⁶ Suffolk Reply PRM at 15-19.

⁴⁷ Suffolk Reply PRM at 18-19.

proposal based on its knowledge of its own system and Televate's experience with similar public safety radio systems.⁴⁸ Suffolk contends that it is in the best position to assess how much time it will need to perform rebanding tasks.⁴⁹ Suffolk also notes that its request for recovery of historical costs includes reimbursement for Televate's role in both Suffolk's Channel 1-120 (Stage 1) negotiations as well as the instant negotiations.⁵⁰ Suffolk notes that Stage 1 was successfully negotiated, but that the agreement did not include the time and cost to Suffolk and Televate to support the Stage 1 effort.⁵¹ Suffolk contends that had it not agreed with Sprint to defer Televate's costs associated with Stage 1 negotiations, it could have reduced what it now seeks in the present RFPF.⁵² Suffolk argues that it is being penalized for its cooperation with Sprint during the Stage 1 negotiations, given that Sprint is now seeking to avoid reimbursing these costs.⁵³

20. Suffolk allocates the 160 future project management hours as follows: 66 hours to assemble and share program status and insights with appropriate internal and external personnel, 40 hours to prepare, travel and present presentations to appropriate Suffolk stakeholders, 42 hours of reconfiguration planning oversight management and 12 hours to prepare a rebanding MS Project plan.⁵⁴

21. *Sprint Position.* Sprint asserts that Televate's project management costs are excessive for the Suffolk system, which is not particularly complex, and proposes to pay for 128 hours of Televate's work.⁵⁵ Sprint contends that at least 20 of the project management hours contain little or no description of the work performed, and that Suffolk has overestimated the complexity and time required for other project management tasks.⁵⁶ Sprint argues that the Stage 1 negotiations could not have added significantly to Televate's project management costs because Suffolk's own documentation shows that Televate spent only 16 hours on Stage 1 negotiation support.⁵⁷

22. *Mediator Recommendation.* The mediator recommended approving 165.25 of Televate's historical hours and 106 of Televate's estimated future hours, for a total of 271.25 hours out of the 435.75 that Suffolk requests.⁵⁸ The mediator concluded that 55 hours attributed to historical sub-tasks were duplicative of other cost categories.⁵⁹ The mediator also recommended reducing from 13.5 hours to four hours the time allotted for Televate to define Motorola's roles and responsibilities in the reconfiguration.

⁴⁸ Suffolk PRM at 12.

⁴⁹ *Id.* at 16.

⁵⁰ Suffolk PRM at 15.

⁵¹ Suffolk Reply PRM at 14.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.* at 18-19

⁵⁵ Sprint PRM at 31, 35.

⁵⁶ *Id.*

⁵⁷ *Id.* at 32-33.

⁵⁸ RR at 32.

⁵⁹ *Id.* at 33-34. The mediator found the following activities to be duplicative: (1) 16 hours for Televate internal staff meetings (duplicative of hours attributed to "resources management, quality management" and "schedule control"); (2) 21 hours for Televate to comply with the TA's schedule and engage in preplanning and planning activities (duplicative of hours attributed to "[l]icensee awareness meetings and conference calls," "[c]reating reconfiguration work procedures," and "[o]verall projected management"); (3) 16 hours for Televate's role in tracking the project schedule and cost (duplicative of hours attributed to "resources management, quality management for all of the deliverables, and schedule control"); and (4) 2 hours for Televate to review Sprint's questions and prepare a detailed response (duplicative of hours attributed to Televate's participation in meetings and conference calls).

The mediator found Motorola's role and responsibilities to be well-defined, and that four hours should be adequate to accomplish the task.⁶⁰ Finally, the mediator recommended reducing Televate's role in collecting data for the RFPF from 111.5 hours to 65.5 hours. The mediator found this request to be duplicative of 46 hours requested and approved elsewhere for Televate's inventory activities associated with the RFPF.⁶¹

23. With regard to estimated future hours, the mediator recommended approving the 12 hours devoted to the creation of the MS Project rebanding plan, but recommended reducing the time allocated to meetings with Suffolk stakeholders from 40 hours to eight hours. The mediator found 32 hours for Televate travel time to be duplicative, and questioned why meetings could not be conducted via telephone or video-conference or consolidated with other Televate activities.⁶² The mediator also found overlap between 66 hours sought for "gathering project task progress, updating and producing status reports, and communicating with key project personnel" and 42 hours sought for "vendor coordination and management as appropriate as well as review of each category of deliverables for quality and cost management." Given this overlap, the mediator recommended reducing the requested 66 hours by one-third to 44 hours.⁶³

24. *Discussion.* We approve 175.75 hours for project management costs previously incurred by Televate and 106 hours for future project management costs. We find that 100 hours of time previously spent by Televate on project management was duplicative of other tasks. However, given the Commission's guidance in the *Minimum Cost Order*, we find that the two hours Suffolk seeks to allow Televate to review and respond to Sprint's questions and the 13.5 hours sought to define Motorola's roles and responsibilities are *de minimis* amounts and we will allow them. With regard to proposed future hours, we find that some of Televate's proposed costs are duplicative, and that Televate can realize efficiencies in project management by eliminating unnecessary travel time and consolidating meeting activity.

E. Transition and Acceptance Test Plan

25. Suffolk seeks a total of 354 hours for Televate's role in developing a transition plan (286 hours) and an acceptance test plan (68 hours).⁶⁴ We approve 200 hours.

26. *Suffolk Position.* Suffolk states that Televate will have a substantial role in preparing the transition plan, and that the hours proposed are not duplicative of the hours associated with Motorola.⁶⁵ Suffolk argues that while Motorola's is focused on retuning and reprogramming the base stations and repeaters, including the combiners at each radio site, Televate will serve as the overall project manager, a role which includes managing Motorola's efforts.⁶⁶ This will require Televate to identify talk groups, user protocols, how the radios are used, and times the radios are in use or available for reprogramming.⁶⁷ To obtain this information, Televate proposes to spend 40 hours meeting with and gathering data from 13 user agencies.⁶⁸ In addition, Suffolk states that it will require a total of 16 hours for travel between

⁶⁰ RR at 33.

⁶¹ *Id.* at 34.

⁶² *Id.* at 34.

⁶³ *Id.* at 35.

⁶⁴ Suffolk Reply PRM at 24.

⁶⁵ *Id.*

⁶⁶ *Id.* at 21-21. Suffolk details Televate's tasks at *id.* 22-24.

⁶⁷ *Id.*

⁶⁸ *Id.* at 22.

Telecate's offices in northern Virginia and the City of Suffolk, where the meetings will be held.⁶⁹ Once Telecate has met with the user agencies, Suffolk proposes that Telecate spend 40 hours reviewing and refining the Motorola infrastructure reconfiguration plan in light of the information gathered.⁷⁰ Telecate anticipates spending 55 hours preparing the cost estimate for the FRA.⁷¹

27. Suffolk estimates that Telecate will then spend 135 hours developing the operational transition plan, which Suffolk claims is the most important part of the reconfiguration process.⁷² Suffolk states that Telecate will prepare a comprehensive database that outlines how the users' radios will be retuned or replaced; how many radios a specific agency can provide for reprogramming at one time; how many vehicles can be brought in at a specific time; and how to integrate the equipment downtime into day-to-day operations.⁷³ The Licensee asserts that while Motorola's retune plan is focused on a step-by-step retune of the network infrastructure, Telecate's plan accounts for an integrated subscriber and infrastructure retune plan.⁷⁴

28. Suffolk's original acceptance plan proposal called for 108 hours to be allocated as follows: (1) 30 hours to plan a "clear frequency test"; (2) 14 hours to plan a "pre and post rebanding coverage test"; (3) 34 hours to plan "system quality testing"; and (4) 30 hours to plan "Motorola software testing".⁷⁵ In its Reply PRM, Suffolk reduced the number of hours it sought for these tasks to 68, but did not allocate how the hours would be spent.⁷⁶

29. *Sprint Position.* Sprint contends that Suffolk's request for 354 hours to develop a transition plan and an acceptance test plan is excessive. Sprint proposes 200 hours for Telecate to accomplish these tasks.⁷⁷ Sprint asserts that some of the transition plan sub-tasks appear to be more related to the implementation stage than the planning stage.⁷⁸ Sprint also argues that Suffolk could reduce the number of agency meetings and Telecate's travel time to and from meetings by half.⁷⁹ In addition, Sprint questions Suffolk's inclusion of 50 hours for RFPF preparation costs as part of transition plan preparation, noting that RFPF costs are separately accounted for.⁸⁰ With respect to preparation of the operational transition plan, Sprint asserts that Telecate's proposed work is duplicative of "engineering and implementation" planning being performed by Motorola.⁸¹ Sprint asserts that this work by Motorola represents the "backbone" of the planning efforts to reconfigure Suffolk's system.⁸²

30. *Mediator Recommendation.* The mediator recommended approving 156 hours for transition plan preparation and 44 hours for acceptance test plan preparation, for a total of 200 hours. The

⁶⁹ *Id.*

⁷⁰ *Id.* at 22-23.

⁷¹ *Id.* at 24.

⁷² *Id.* at 23-24.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ Suffolk PRM, Exhibit 18, 8-9.

⁷⁶ Suffolk Reply PRM at 24.

⁷⁷ Sprint PRM at 36-37, 40.

⁷⁸ *Id.* at 37.

⁷⁹ *Id.*

⁸⁰ *Id.* at 38.

⁸¹ *Id.* at 39.

⁸² *Id.*

mediator agreed with Sprint that Televate should consolidate meetings with user agencies to reduce overall meeting and travel time.⁸³ The mediator further noted that Televate representatives are working on other rebanding projects in the region.⁸⁴ The mediator therefore recommended budgeting two hours per meeting rather than four hours, and eliminating travel time by using telephone and video conferences as an alternative to meetings.⁸⁵ The mediator concluded that 16 hours rather than 40 hours is sufficient time for Televate to review and assess the Motorola infrastructure reconfiguration plan, given Motorola's expertise and experience in developing such plans.

31. The mediator also recommended approving 120 of the 135 hours requested for Televate's development of an operational transition plan. The mediator agreed with Suffolk that Televate's role is separate and distinct from Motorola's. However, the mediator noted that tasks such as "coordination" and briefing of agency representatives were included in the 135 hour figure. The mediator concluded that this element of the request was duplicative of time allotted elsewhere for project management and meetings with Suffolk and its agencies. The mediator therefore recommended reducing the time allowed to 120 hours.⁸⁶ Finally, the mediator found that the 55 hours allocated for the development of the cost estimate of the FRA was duplicative of 50 hours sought for Televate's role in preparing the FRA.⁸⁷

32. The mediator recommended approving 48 hours for developing an acceptance test plan.⁸⁸ The mediator concluded that four hours rather than 30 hours was sufficient time for Televate to plan the testing of Motorola software, given the standardized nature of the software.⁸⁹ The mediator also was not persuaded that Suffolk needed 34 hours for "system quality testing."⁹⁰

33. *Discussion.* After review of the record, we approve 200 hours for these tasks. We will not allow the additional 154 sought by Suffolk because some of the tasks identified by Televate are duplicative of tasks accounted for elsewhere in its planning proposal, and because Televate can realize efficiencies in the planning process by reducing travel time and consolidating meeting activity.

F. Frequency Analysis

34. Suffolk requests reimbursement of \$800 for five hours of Televate time to reconfigure software in order to perform a co-channel analysis.⁹¹ We approve this request as a *de minimis* expense.

35. *Sprint Position.* Sprint contends that the requested software reconfiguration and analysis is not reasonably necessary for rebanding.⁹² Sprint argues that the software in question is a tool used primarily for the implementation of a new communications system and its use would not produce relevant results as to adjacent channel interference or confirm that the channels to which the Suffolk will be relocated have been cleared⁹³

⁸³ RR at 35 *citing* Sprint PRM at 37

⁸⁴ RR at 35 *citing* Sprint PRM, Appendix A at 6.

⁸⁵ RR at 35

⁸⁶ *Id.*

⁸⁷ *Id.* at 36.

⁸⁸ *Id.* at 37. The mediator examined the detailed 108 hour plan contained in Suffolk's PRM, not the 68 hour proposal contained in its Reply PRM.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ Suffolk PRM, Exhibit 5 at 8.

⁹² Sprint PRM at 11.

⁹³ *Id.*

36. *Mediator Recommendation.* The mediator found that Suffolk had not met its burden of demonstrating that this task was reasonable, prudent, and necessary to rebanding.⁹⁴

37. *Discussion.* We will allow this claim as a *de minimis* expense. While Suffolk has not provided detailed information of the type that would justify a more significant expenditure on frequency analysis in this case, but in accordance with the *Rebanding Cost Clarification Order*, we find that payment of the disputed cost “will avoid greater expense to negotiate and/or mediate the dispute and will further the goal of timely and efficient rebanding.”⁹⁵

G. Payment Terms

38. Suffolk asserts that Televate should be paid 50 percent of its estimated planning costs immediately upon signing of the PFA.⁹⁶ We grant relief with respect to costs that Televate has actually incurred prior to the signing of the PFA.

39. *Suffolk Position.* Suffolk argues that because of the protracted nature of PFA negotiations, Televate has been forced to carry significant planning costs for a long period of time without payment by Sprint. Suffolk also argues that in contracts where Motorola is providing rebanding planning services, Sprint has agreed to pay Motorola 50 percent upon PFA signing, and that Televate is entitled to the same payment terms.⁹⁷

40. *Sprint Position.* Sprint contends that it is only required to pay vendors within 30 days of the payment obligation date, which Sprint defines as the date it receives a written vendor invoice or the licensee approves a vendor invoice. Sprint acknowledges that it has a different payment arrangement with Motorola, but asserts that this is because it has a long-standing relationship with Motorola and because Motorola is undertaking a nationwide role in rebanding of numerous systems.⁹⁸ Sprint contends that it has discretion to negotiate different payment terms with different vendors and that its payment practice with Motorola does not bind it with respect to other vendors.⁹⁹ Sprint also argues that requiring it to pay Televate upon signing the PFA would contradict TA guidelines and “open the flood gates” for every vendor to demand upfront payment.¹⁰⁰

41. *Mediator Position.* The mediator recommends finding in Suffolk’s favor and requiring Sprint to pay Televate 50 percent of its estimated costs upon execution of the PFA. The mediator notes that Televate has already incurred significant costs and has been carrying those costs for some time.¹⁰¹

42. *Decision.* Upon execution of a PFA with Suffolk, we direct Sprint to pay planning costs that Televate has already incurred and that have been approved by this Order. Televate has had to carry these costs for some time, and it is appropriate that they be paid by Sprint promptly. At the same time, we will not require Sprint to pay any portion of anticipated costs upon signing of the PFA. Our rules allow but do not require upfront payment of rebanding costs by Sprint, provided that it pays such costs promptly as they are incurred.

⁹⁴ RR at 26.

⁹⁵ *Rebanding Cost Clarification Order* at ¶ 10.

⁹⁶ Suffolk PRM at 16-17.

⁹⁷ *Id.* at 17.

⁹⁸ *Id.*

⁹⁹ *Id.* at 41.

¹⁰⁰ Sprint SOP at 14.

¹⁰¹ RR at 38.

H. Additional Televate Hours

43. Suffolk seeks reimbursement for 304 hours of work performed by Televate from mid-2006 through the end of January 2007 that was not identified until Suffolk filed its Reply PRM on February 27, 2007.¹⁰² We approve the portion of these hours that reflects work performed by Televate after the filing of Suffolk's initial PRM on December 1, 2006.

44. *Suffolk Position.* In its Reply PRM, Suffolk for the first time sought to add 304 "unanticipated" hours to its prior request on behalf of Televate. Suffolk asserted that these hours reflect mediation-related work by Televate, including preparing detailed responses to Sprint's questions, conference calls with Suffolk staff, legal counsel, and Sprint to discuss mediation issues, and assisting in preparation of Suffolk's PRM and reply PRM.¹⁰³ In its Statement of Position, Suffolk asserts that some of these hours were spent answering questions posed by the TA as well as Nextel.¹⁰⁴

45. *Sprint Position.* Sprint argues that these costs should be disallowed because Suffolk did not identify them in its initial PRM. Thus, Sprint did not have a chance to respond to, much less negotiate, this request before the mediator.¹⁰⁵ Sprint contends that allowing Suffolk to add a new claim for costs at the last minute undermines the mediation process and threatens to delay resolution of issues.¹⁰⁶ Sprint further contends that Suffolk's claim is unsupported on the merits. While Suffolk claims that these hours reflect mediation activity through the end of January 2007, Sprint contends that there was little such activity after November 2006.¹⁰⁷ Finally, Sprint contends that allowing Televate credit for 304 hours of additional work would push total project management costs beyond those set forth in the TA metrics for planning funding.¹⁰⁸

46. *Mediator Position.* Because Suffolk did not raise this claim in mediation until the filing of its reply PRM, the mediator did not address the issue.

47. *Discussion.* An examination of the timesheets reveals that Televate incurred 171 of the 304 hours prior to the filing of its initial PRM on December 1, 2006. Suffolk is hard pressed to claim that these hours were "unanticipated."¹⁰⁹ Suffolk had the opportunity to identify them in its initial PRM, which would have enabled Sprint and the mediator to evaluate whether they were reasonable. By choosing not to do so, Suffolk has waived its ability to seek reimbursement of these hours. However, we will allow Suffolk to obtain reimbursement of the remaining 133 hours, which primarily consist of work by Televate to evaluate the MCM software and assist in preparation of the reply PRM. Because these hours were incurred after the filing of the initial PRM, Suffolk's inclusion of them in the Reply PRM was timely. We also find that these costs are rebanding-related and recoverable under the standard set forth in the *Rebanding Cost Clarification Order*.

¹⁰² Suffolk Reply PRM at 19.

¹⁰³ *Id.* at 19-20.

¹⁰⁴ Suffolk Statement of Position at 10-11. We note that Suffolk also seeks to recover its costs associated with filing of a Request for Clarification and its Statement of Position with the Bureau. *Id.* at 12. We deny this request since the Commission has recently held that expenses for litigation of rebanding issues before the Commission are not recoverable. See *Improving Public Safety Communications in the 800 MHz Band*, WT Docket 02-55, *Second Memorandum Opinion and Order*, 22 FCC Rcd 10467 (2007) at ¶¶ 43-50.

¹⁰⁵ Sprint SOP at 14-15.

¹⁰⁶ *Id.* at 16.

¹⁰⁷ *Id.* at 16.

¹⁰⁸ *Id.* at 16-17.

¹⁰⁹ We note that Suffolk does not provide any explanation as to why it did not submit those hours as part of its initial PRM.

IV. ORDERING CLAUSES

48. Accordingly, pursuant to the authority of Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392; Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 90.677, of the Commission's Rules, 47 C.F.R. § 90.677, IT IS ORDERED that the issues submitted by the Transition Administrator are resolved as discussed above.

49. IT IS FURTHER ORDERED that the Transition Administrator shall convene a meeting of the parties consistent within seven days of the date of this Order for the purpose of completing a Planning Funding Agreement consistent with the resolution of issues set forth herein.

FEDERAL COMMUNICATIONS COMMISSION

David L. Furth
Associate Bureau Chief
Public Safety and Homeland Security Bureau